EDMUND G. BROWN JR., Attorney General
of the State of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
BRIAN S. TURNER, State Bar No. 108991
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-0603
Facsimile: (916) 327-8643

Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MARIBEL CURIEL 1990 Wildriver Drive Yuba City, CA 95991 Registered Nurse License No. 665879 Respondent.	Case No. 2009-98 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

2. On or about September 19, 2005, the Board issued Registered Nurse License Number 665879 to Maribel Curiel ("Respondent"). Respondent's registered nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

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STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

> The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
>
> (a) Unprofessional conduct, which includes, but is not limited to, the following:
>
> (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions . . .

6. Code section 2762 states, in pertinent part:

> In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:
>
> (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
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> . . . .
>
> (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

7. Code section 4060 states:

> No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant

pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

8. Health and Safety Code section 11173 states, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

9. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCE AT ISSUE

11. "Dilaudid", a brand of hydromorphone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K).

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FIRST CAUSE FOR DISCIPLINE

(Diversion and Possession of Controlled Substances)

12. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that in or about August 2007, and October 2007, while employed as a registered nurse in the Emergency Department at Fremont Rideout Health Group, Marysville, California, Respondent did the following:

Diversion of Controlled Substances:

a. Respondent obtained the controlled substance Dilaudid by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a), as follows: During the time periods indicated above, Respondent removed various quantities of Dilaudid from the Emergency Department's Acudose-Rx Station[1] under the names of Patients A through K, when, in fact, those patients had already been discharged from the Emergency Department. Further, Respondent did not provide care for Patients A through K, and did not chart the administration or wastage of the Dilaudid in the Emergency Department records for those patients, as set forth in paragraph 13 below. In addition, Respondent removed a total of 4 mg Dilaudid from the Acudose-Rx Station under Patient L's name when, in fact, the physician's order called for the administration of only 2 mg Dilaudid for the patient.

Possession of Controlled Substances:

b. During the time periods indicated above, Respondent possessed unknown quantities of the controlled substance Dilaudid without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

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1. The Acudose-Rx Station is a medication dispensing system that automates the distribution, tracking, management, and control of medications. Acudose machines are usually placed in patient care areas of hospitals and dispense unit doses of drugs from locked drawers when a staff member enters a recognized PIN.

SECOND CAUSE FOR DISCIPLINE

(False Entries in Hospital/Patient Records)

13. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (e), in that while employed as a registered nurse in the Emergency Department at Fremont Rideout Health Group, Marysville, California, Respondent falsified or made grossly incorrect, grossly inconsistent, or unintelligible entries in the Emergency Department's records pertaining to the controlled substance Dilaudid, as follows:

Patient A:

a. On October 2, 2007, at 0646 hours, Respondent withdrew a total of Dilaudid 4 mg from the Acudose-Rx Station under Patient A's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 4 mg.

Patient B:

b. On October 3, 2007, at 0056 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient B's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient C:

c. On October 2, 2007, at 2148 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient C's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

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Patient D:

d. On October 5, 2007, at 0148 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient D's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient E:

e. On October 3, 2007, at 0055 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient E's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient F:

f. On October 2, 2007, at 2203 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient F's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient G:

g. On October 3, 2007, at 2309 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient G's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient H:

h. On October 3, 2007, at 2320 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient H's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the

administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient I:

i. On October 4, 2007, at 1801 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient I's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient J:

j. On October 8, 2007, at 0150 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient J's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient K:

k. On August 19, 2007, at 1849 hours, Respondent withdrew Dilaudid 2 mg from the Acudose-Rx Station under Patient K's name, when, in fact, the patient had already been discharged from the Emergency Department. Further, Respondent failed to chart the administration or wastage of the Dilaudid in the Emergency Department records for the patient and otherwise account for the disposition of the Dilauid 2 mg.

Patient L:

l. On August 25, 2007, at 2339 hours, Respondent withdrew a total of 4 mg Dilaudid from the Acudose-Rx Station under Patient L's name, when, in fact, the physician's order called for the administration of only 2 mg Dilaudid for the patient. Further, Respondent charted in the Emergency Department records that she administered 2 mg Dilaudid to the patient at 2340 hours, but failed to chart the wastage or otherwise account for the disposition of the remaining 2 mg Dilaudid.

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THIRD CAUSE FOR DISCIPLINE

(Gross Negligence)

14. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that in or about August 2007, and October 2007, while employed as a registered nurse in the Emergency Department at Fremont Rideout Health Group, Marysville, California, Respondent was guilty of gross negligence within the meaning of Regulation 1442, as set forth in paragraphs 12 and 13 above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 665879, issued to Maribel Curiel;

2. Ordering Maribel Curiel to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 10/20/08

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant

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